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Recovery of VAT for holding companies

Positive judgment by Court of Justice of the European Union (CJEU)

On 16 July 2015, the CJEU delivered its judgment in the joined cases of Larentia + Minerva (C–108/14) and Marenave Schiffahrts (C-109/14). The judgment is welcome as it clarifies the VAT recovery position of holding companies which manage their subsidiaries. These cases were referred by Germany.

The judgment deals with the entitlement of a holding company to recover VAT incurred on raising capital from a third party which was used to fund the acquisition of shareholdings in subsidiaries and the management of those subsidiaries. The CJEU has held that such VAT is regarded as general expenditure which is recoverable in full unless the holding company also makes VAT exempt supplies in which case it is necessary to carry out an apportionment calculation. There is no requirement to apportion by reference to economic (making supplies) and non-economic activities (the holding of shares).

The Court clarified the VAT recovery positon of a holding company which is involved in the management of some subsidiaries and not in other subsidiaries. It held that it is necessary to apportion the VAT incurred between the economic and non-economic activities according to criteria defined by the member states.

Two other queries regarding the scope of VAT grouping provisions were also referred to the Court. The reason for referring these two queries was to establish if the parties could claim direct effect to avail of the VAT grouping provisions set out in the VAT directive and use the taxable supplies of the subsidiaries with third parties to make a claim for VAT recovery on the costs in question.

German legislation only allows VAT grouping to entities with legal personality and where the entities are in a relationship of subordination with a controlling company of a group. The Court held that such restrictions are precluded unless they are appropriate and necessary to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance.

It was also held that a taxable person cannot claim direct effect to benefit from VAT grouping provisions contained in the VAT directive where the particular member state's legislation is not compatible with the directive and cannot be interpreted in a way which is compatible with it.

This judgment should encourage holding companies which have incurred VAT in similar circumstances but have not recovered the VAT incurred to revisit that decision.

Contact

If you have any questions on on the judgment and its impact on VAT recoverability for holding companies please contact your usual Grant Thornton staff member.

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